

REMARKS

Claims 12-40 are currently pending. Applicants thank the Examiner for indicating that amended Claims 12-29 are allowable. In a Final Office Action mailed August 19, 2003, the Examiner has raised a number of issues, listed below in the order they are addressed herein:

- 1) The Information Disclosure Statement references were not located and have not been considered;
- 2) Claims 36-40 are allegedly directed to an invention that is independent or distinct from the originally presented invention; and
- 3) Claims 30-35 are rejected under 35 USC § 112, second paragraph, as allegedly indefinite.

Applicants have amended Claims 30 and 32, and have canceled Claims 36-40, in order to further the prosecution of the present application and Applicants' business interests, yet without acquiescing to the Examiner's arguments. Applicants reserve the right to prosecute the original, similar, or broader claims in one or more future application(s). These amendments do not introduce new matter and are not intended to narrow the scope of any of the claims within the meaning of *Festo*.¹

1) Information Disclosure Statement (IDS) References

The Examiner has indicated that the IDS references listed on Form PTO-1449 and submitted by Applicants on October 1, 2001 (received by the Office on October 10, 2001), have not been considered because the Examiner was unable to locate them. For this reason, Applicants are resubmitting an IDS, a PTO-1449 and the 71 references cited therein. Applicants request that the references be considered by the Examiner prior to allowing this application.

2) The Claims are Directed to a Single Invention

The Examiner has rejected Claims 36-40 as allegedly directed to an independent or distinct invention. Applicants respectfully disagree. Nonetheless, Applicants have canceled Claims 36-40, in order to further the prosecution of the present application and Applicants'

¹ *Festo Corp. v. Shoketsu Kinzoku Kogyo Kabushiki Co.*, 535 U.S. 722, 122 S.Ct. 1831, 1838, 62 USPQ2d 1705, 1710 (2002).

business interests, yet without acquiescing to the Examiner's arguments, and while reserving the right to prosecute the original, similar, or broader claims in one or more future application(s).

3) The Claims are Definite

The Examiner has rejected Claims 30-35 under 35 USC § 112, second paragraph, as allegedly indefinite. In particular, the Examiner has indicated that Claim 30 "is directed to identifying a compound but lacks any method steps to do so" and that Claim 32 has a typo (Office Action, page 2). Applicants disagree that a method step needs to be recited. Nonetheless, Applicants have amended Claims 30 and 32, in order to further the prosecution of the present application and Applicants' business interests, yet without acquiescing to the Examiner's arguments, and while reserving the right to prosecute the original, similar, or broader claims in one or more future application(s). In particular, Applicants have amended Claims 30 to recite step "g) identifying a candidate compound which inhibits ketol isomerase activity, wherein the amount of said chromogenic product in said first reaction mixture is greater than the amount of said chromogenic product in said second reaction mixture." Support for this amendment can be found, for example, in original Claim 12. In addition, Applicants have removed the comma between bacterial and sample in Claim 32, in order to correct this typographical error. Applicants assert that the amended claims are definite and therefore respectfully request that this rejection be withdrawn

CONCLUSION

Applicants respectfully request that a timely Notice of Allowance be issued in this case. However, should the Examiner believe that a telephone interview would aid in the prosecution of this application, Applicants encourage the Examiner to call the undersigned collect.

PATENT

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